Supreme Court, U.S.
FILED

991280 JAN 24 2000

OFFICE OF THE CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

JOHN N. FISHER --- PETITIONER

vs

MICHIGAN --- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE CIRCUIT COURT FOR THE COUNTY OF
OAKLAND, STATE OF MICHIGAN

PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

Questions Presented

Question I

Is the judgment of sentence and commitment to jail of 3-23-98 (Appendix I) void for being in violation of petitioner's due process rights under both constitutions (U.S. Const., Ams 5 and 14 and Mich Const., art I, Sec. 17)?

Question II

Assuming, arguendo, the validity of such judgment, did its rendition (and defendant's commencing to serve same) exhaust the court's power of sentence, whereby to render void any attempt to impose probation upon defendant in violation of defendant's due process and double jeopardy rights under both constitutions (U.S. Const., Ams 5 and 14 and Mich. Const., art I, Sec.15)?

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Appendix I

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Appendix J

Sentencing order of 3/23/98 in the same court (52/3 district court) purporting to impose probation upon defendant.

OPINIONS BELOW

The trial court entered a judgment of sentence and commitment to jail (Appendix I) without a written opinion.

The first tier (circuit court) of appellate courts was an appeal as of right. This court entered an order affirming defendant's conviction and sentence (Appendix A) without a written opinion.

The second tier (court of appeals) of appellate courts was a discretionary appeal. This court entered an order denying leave to appeal (Appendix B) without a written opinion.

The third tier (the supreme court) of appellate courts was also a discretionary appeal. This court entered an order denying leave to appeal (Appendix B) without a written opinion. This court subsequently entered an order denying petitioner's motion for reconsideration (Appendix D) without a written opinion.

None were published

JURISDICTION

Petitioner seeks review of the circuit courts' order affirming defendant's conviction and sentence of August 31, 1998 (Appendix A). This court has jurisdiction pursuant to 28 U.S.C. Sec.1257 (3).

CONSTITUTIONAL, STATUTORY AND ORDINANCE PROVISIONS INVOLVED

U.S. Const. 4th Amendment

The right of the people to be secure in their persons ... against unreasonable ... seizures shall not be violated and no warrants shall issue, but upon probable cause supported by Oath or affirmation and particularly describing the ... persons ... to be seized.

U.S. Const. 5th Amendment

...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb ... nor be deprived of ... liberty ... without due process of law.

U.S. Const. 6th Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ... and to be informed of the nature and cause of the accusation ...

U.S. Const. 14th Amendment

No State ... shall ... deprive any person of ... liberty ... without due process of law ...

Michigan Compiled Laws

(MCL 257.626) Reckless driving on highway, frozen public lake or parking place; penalty.

Sec 626 (a) Any person who drives any vehicle upon a highway or a frozen public lake, stream or pond or other place open to the general public, including any

area designated for the parking of motor vehicles, within this state, in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving.

City of Rochester Hills Municipal Code; Title 7. Police Regulation; Chapter 7-09; Traffic;

Sec 5.14 Reckless driving; violation punishable as misdemeanor.

A person who drives any vehicle on a highway or a frozen public lake, stream, pond, or other place open to the general public, including any area designated for the parking of motor vehicles, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving which, upon conviction, is punishable as a misdemeanor.

STATEMENT OF THE CASE

Petitioner has been subjected to two seriatim criminal prosecutions for the same underlying offense (the first by the City of Rochester Hills, Michigan and the second by the State of Michigan). He was referred to in each such prosecution as a defendant; the same reference will sometimes be used herein as the context admits.

A criminal prosecution of defendant for reckless driving on 10-1-94 was commenced by the City of Rochester Hills, Michigan via a traffic citation issued on 10-6-94 (Appendix E) in the 52/3 district court charging him with violation of City ordinance Sec. 5.14 proscribing reckless driving. This City prosecution was assigned Case # 94-008923-CT (the suffix "CT" stands for City) and was continued for nearly a year until jury selection day on 9-15-95. On that day, the "officer in charge" of the case did not show up and the City prosecutor wanted him to be present when the City selected a jury. As a consequence, a "pledge of public faith" agreement was entered into [on behalf of the defendant, on the one hand, and on behalf of goverment, on the other (the City in the instance)]. Said agreement was placed on the record and approved by the trial court judge. The agreement of 9-15-95 terminated the City prosecution of defendant upon the terms agreed to in open court. A verbatim record of the "pledge of public faith" agreement of 9-15-95 is set forth in Appendix F. The termination was without prejudice to the City on one condition, i.e., the happening of "some unusual circumstance that kept the officer from coming here". In "any other event", the officer in charge "would not be able to" ("refile" or "rewrite", that is). In approving the agreement, the district court judge stated that the case would "be

dismissed without prejudice (to the City, that is) with the condition agreed to by the parties on the record" (Appendix F).

Thereafter, the court entered an order of dismissal (Appendix G) on 10-3-95 in fullfilment of said agreement; of 9-15-95 (Appendix F). Said dismissal order of 10-3-95 (Appendix F) became a final judgment of the law in a criminal case since the City never reopened the City prosecution (Case # 95-008923-CT), nor did it ever appeal from said final order of dismissal (Appendix G).

Subsequently, on 10-10-95, the State of Michigan commenced a second criminal prosecution against defendant for the same wrongful conduct (reckless driving on 10-1-94) by filing a criminal complaint against him (Appendix H) in the same court (52/3 district court). The State prosecution was assigned Case # 95-007262-ST. (the suffix "ST" stands for State); it was based upon a comparable statute (MCL 257.626); which proscribes reckless driving. The State prosecution was commenced (and continued to completion) while the final judgment of 10-3-95 (Appendix G) remained in full force and effect;

{The above-cited Sec. 5.14 of the City ordinance is nearly a verbatim copy of the statute (MCL 257.626) as witness the "frozen public lake" phraseology contained in each enactment}.

The State prosecution (Case # 95-007262-ST) continued for over two years until final disposition by jury verdict of guilty, whereupon a judgment of sentence and commitment to jail was entered on 3-28-98 (Appendix I). Defendant was immediately incarcerated thereunder on that very day (on 3-23-98)

and was compelled to serve the full term of his sentence (45 days) in jail. The district court also entered a sentencing order (Appendix J) which attempted to impose 24 months probation upon defendant (though probation requires withholding of the power of sentence and though probation is the antithesis of sentencing). Defendant has recently been cited for probation violation with a recommendation that he serve a second 45 day jail sentence; he is scheduled to appear before the 52/3 district court on 1-26-00 to show cause why he should not be incarcerated for another 45 day jail term for violation of probation.

Defendant appealed his conviction and sentence (to no avail) to three tiers of appellate courts; the circuit court, the court of appeals and the supreme court. The first tier (to the circuit court) is an appeal by right; the second (to the court of appeals is by discretionary review); and the third (to the supreme court) is by discretionary review. The opinions of these three tiers of appellate courts are set forth in Appendices A through D.

The federal questions sought to be reviewed are based upon absence of authority of the State to commence a second prosecution of defendant and absence of jurisdiction in the court to entertain such second prosecution. Absence of jurisdiction can be raised at any time (so that raising them for the first time in the U.S. Supreme Court, is not fatal to review on certiorari). As a matter of fact, defendant raised this jurisdictional issue in the court of first instance and in each of the three tiers of appellate courts, thereabove. The two questions presented in the instant petition are identical to the two issues presented in each of the three tiers of appellate courts. No reasons were given

for denial of discretionary review by the last two tiers of appellate courts and whatever reasons were given by the two courts below the top two tiers could not possibly supply jurisdiction where none exists in the first place.

REASONS FOR GRANTING THE PETITION

QUESTION I

[invalidity of the judgment and commitment to jail of 3-23-98 (Appendix I)]

In a guide that the Supreme Court passes out, it says that its primary concern is to decide cases presenting issues of importance beyond the particular facts and parties involved. The instant case is one of these (though, from the standpoint of the crime involved and its punishment), it may appear to be the most miniscule criminal case that has ever darkened the doors of the Supreme Court in its entire history). On the other hand, one day, nay one hour, nay one moment of unlawful confinement (as happened in the instant case) is an unacceptable encroachment upon liberty which our law so highly prizes (as much as life itself). Especially must it be safeguarded when, as in the instant case, its infringement comes from the excesses or neglects of those in high places including erring judges (or judges who do worse than merely err).

. Did not one of our founding fathers make famous his plea: "Give me liberty or give me death!" (which, even to this day, rings so loud and clear throughout our great nation)? From the viewpoint of justice and the Supreme Court in its relation to the States and their criminal justice systems, the instant case is monumental in its importance. It stands right up there with those two giants, the Thigpen and Waller cases, supra (to be mentioned). It accords to the Supreme Court an opportunity to step into the country's jurisprudence nationwide to give it the infusion of life it needs so much in these perilous times in which we find

ourselves (of breakdown of the Rule of Law). A message must be sent from the Supreme Court to the criminal justice systems of the States that in our land, at least, the mandatory arbiter of the rule of law is our federal constitution as commanded by the due process clause thereof. Unbelievably, it is not respected by the State courts as is it should be. The State courts respect the double jeopardy clause far more than they do the due process clause (as witness the instant case). This is a sad, but certain, fact of life (or non-life) in the judicial halls of the State courts (the best witness of which is the instant case and its treatment at the hands of the criminal justice system of Michigan). If, in the first criminal prosecution of petitioner, he had been put in jeopardy, he would have won hands down. As it is, he lost through every one of the three tiers of appellate courts in which he pursued his remedy (and without so much as a single dissent). Exactly because the due process clause is honored by the lips of judges (while their hearts are far from it) is why this happened. Its spirit has been obscured by over com-partmentalization thereof; so much so, that if the facts of a case do not fit into one of these recognized compartments, no violation can be discerned. Even such an august body as your own court has had to struggle with the very same problem. The majority in the Thigpen case, in order to do justice therein, wisely avoided the niceties of distinctions required in the analysis of a double jeopardy violation and, instead, hinged their decision upon one of the compart-mentalized aspects of due process (retaliatory prose-cution). The minority appeared to be convinced that jeopardy did not attach and dissented on that account (not realizing that even coming close to a double jeopardy violation can involve a due process violation along the way).

[*Query*: would the majority have ruled the way they did if they had not found a ready compartment (a well recognized one at that) in which to fit the due process violation?].

While not fitting into such a ready compartment, the instant case involves, yet, an outrage to due process; as much as, if not more, than that which occurred in Thigpen. And as much, if not more, than that which occurred in Waller (though, unlike Waller, jeopardy did not attach in the instant case). Who would contend that Waller did not also involve a due process violation? Or, stated differently, that a double jeopardy violation is another aspect of a due process violation? The instant case is not one of mere error, but, rather, a case of complete and total abuse of power; Ex parte Mills, supra. In the instant case, the 52/3 district court is looking to incarcerate petitioner a second time, notwithstanding that a final judgment of the law in a prior criminal case (Appendix G) is in full force and effect barring his incarceration for a first time. Yet, in deed, petitioner had to suffer such humiliation and outrage from being unlawfuliy confined in jail the first time (and without any possiblity of relief from the State courts of Michiigan).

Defendant had a 4th Amendment (and 14th Amendment) defense to the City prosecution that he was waiting to assert had a witness been sworn against him, to wit: that no oath or affirmation had been made (as said 4th Amendment requires) to base such criminal proceeding against him. The traffic Citation (Appendix E) issued against him, in lieu of a warrant, requires eye witnessing at the scene of a traffic stop by a police officer, whereas, in the instant case the police officer who issued the traffic Citation (Appendix E) was not an eye witness at the scene. He is none other

than Officer Coates, the "officer in charge" (Appendix F) who failed to show up on jury selection day (Appendix A) in the prior City prosecution. Officer Coates issued the traffic Citation (Appendix E) by mail six days after the fact (he wrote the Citation on 10-6-94, whereas the alleged offense occurred on 10-1-94!!). This is the same Officer who, though not an eye witness at the scene, had the effrontery to make a swear-to more than a year later (Appendix H) in order to commence the subsequent State prosecution against petitioner. Can the State be manipulated by Officer Coates? Yes, most assuredly because this is exactly what he did. But can the State, after being so seduced, in turn manipulate the law to deprive petitioner of a prospective double jeopardy defense that he had in his bag of tricks (as a most honorable defense strategy) against the City prosecution? Hardly, for the Rule of Law comes into play here.

{Same, which has been put in place for the benefit of secular society, as a whole has, as its source, the breaking into the history of man, by the Triune God who, forming to Himself a people, gave the law to Moses and, in His His Own Good Time, formed, as a continuation of His people, a Divine Society under the protection of that law to spread in secular society the Faith in Him and in HIs Eternally Begotten Word who became Incarnate for us men, whereby we could be Sanctified by the Holy Spirit through the Sacrifice of the Cross, from whence flows His Redeeming Grace through the Mystery of the continual Renewal of His Shed Blood via the Liturgy of His Divine Society. Too bad for us and our Nation that our President has destroyed the Rule of Law and the Presidency Itself by, inter alia, his amoral character and terrorists acts (all without effective hue or cry from Congress; not a

single voice was heard therefrom to protest the institution of Terrorism as National Policy)}.

The wisdom of such Rule of Law is so magnificent (infinitely above the ken of men if only they could realize this); and why shouldn't it be, since it is divinely inspired and formulated. In the instant case, it provides petitioner with a 6th Amendment (and 14th Amendment) defense against the subsequent State prosecution that he did not have against the prior City prosecution. This is poetic justice to the nth degree [via the law's retaliation for defendant being deprived of his prospective 4th (and 14th Amendment) defense caused by the manipulation of the State that Officer Coates was able to work (in commencing the subsequent State prosecution in the first instance). The State, notwithstanding its having been manipulated by Officer Coates and others in high places, committed a per se violation of petitioner's right to a speedy trial by commencing (on 10-10-95; Appendix H) a criminal prosecution of defendant after more than a year had elapsed since the happening of his alleged "crime" on 10-1-94; Barker v Wingo 407 U.S. 514 (1972). The State did even worse, if such can be imagined. It is guilty, in point of law, of at least the same violation of petitioner's 4th Amendment (and 14th Amendment) right to be free from unreasonable seizure of his person. The arrest Warrant (Appendix H) issued by the prosecutor for the State of Michigan on 10-10-95 could not possibly serve as a cover up for the fatal defect in the illegal criminal prosecution of defendant carried on by the City without such Warrant. The State's guilt for violating petitioner's 4th Amendment right is greater, by far, than that of the City's as such arrest Warrant of 10-10-95 (Appendix H) was (and is) a deliberate false pretense - - a pretext or subterfuge for covering up for the City's wrong. To

deny a wrong is a greater wrong. These are premeditated wrongs of government piled, one on top of the other; wrongs, if such can even be conceived, of a government which, under such Rule of Law, is supposed to be a govern-ment of laws, and not of men.

Petitioner should rest his case at this point and tell the Justices that what follows, while interesting, is not necessary to be read (so long as they read the Appendices from whence the facts appear to give, in turn, rise to the law) for them to get the drift and act instanter to subserve justice in the instant case.

Nevertheless, petitioner plows on because he hopes, thereby, to anticipate the opposition (though of subtle reasoning and sophistry) he knows will be forthcoming from the prosecutor for the State of Michigan in the instant case. Concerning the immunity of the final order of dismissal of 9-15-95 (Appendix G) in the prior City prosecution of defendant from collateral attack by the State [via its subsequent State prosecution of him for the same underlying wrongful conduct (reckless driving on 10-1-94)], Justice Baldwin, in speaking of the legal effect that must be accorded final judgments says:

"A judgment irreversible by a superior court cannot be declared a nullity by any authority of law."
Voorhees v Bank, supra

What cannot be declared a nullity, cannot be treated as a nullity by any authority of law. To collaterally attack a judgment is to treat it as a nullity. The State treated the final judgment of 9-15-95 (Appendix G) as a nullity by collaterally attacking it [by prosecuting defendant while said judgment (Appendix

G) remained in full force and effect (and while the prior City prosecution remained unopened)].

Respect for such final judgment derives from respect for the due process clause which derives from respect for such Rule of Law which, for our nation, derives from respect for the latter's imperative voice echoing same (such Rule of Law) in our land. to wit: our federal constitution. Without first opening up such final judgment in the City prosecution (Case # 94-008923-CT), a second prosecution by the City would be just as much unauthorized as that in the Thigpen case, (if not more so). The motive of the government in the Thigpen case was without honor. The second prosecution was not barred by a written instrument commanding consummate respect under the rule of law, as in the instant case, to wit: a final judgment of a court of law. In the instant case, in the supposed prosecution, it would be barred by the doctrine of finality of judgments (and this irrespective of the City's motive). What the City is barred from doing, so likewise is the State on the same due process grounds; the City (and only the City) could have obtained relief from said final judgment (but did not do so). In Waller there was at least an issue of whether different offenses were being charged, but in the instant case, the same identical alleged wrongful conduct was being prosecuted in the subsequent State prosecution (Case # 95-007262-ST). Since the City and the State derive their respective powers to prosecute for crime from the same ultimate source (the Michigan constitution), the doctrine of Waller of no dual sovereigns, while certainly impacting upon the instant case, is not as pertinent as that of other doctrines of the law. For example, here applicable is the doctrine of finality of judgments and the absolute bar they interpose to a subsequent seriatim criminal prosecution that constitutes a collateral attack upon a

prior final judgment in a first criminal prosection of the same defendant for the same underlying wrongful conduct. The very commencement by the State of the second prosecution against defendant for the same identical act constitutes such impermissible collateral attack upon the final judgment of dismissal of 10-3-95 (Appendix G). In respect to the subsequent State prosecution being a "collateral" attack upon the final judgment of dismissal (Exhibit F) in the prior City prosecution, see Medina v I.N.S. 1 F.3rd 312 (CA5, 1993). In prohibiting the I.N.S. from "collaterally" attacking a decision of an immigration judge, the court there said that: "Few legal doctrines are more intrinsic or necessary in our system (of justice) than res judicata" to insure "that litigation will come to an end". In the same case, the same court earlier (993 F.2d 499; 1993) had said: "The only considerations for purposes of res judicata is whether the judgment was final and valid and there was an opportunity to reach the merits."; an actual adjudication not being an absolute requirement; the only matter of strict necessity being the existence of jurisdiction (a valid proceeding and all interested parties participating) so that there obtains the potential for an actual adjudication.

The four lower courts of Michigan also turned deaf ears upon defendant's plea concerning the mandate of due process applicable in the instant case so as to require reversal by reason of the "pledge of public faith agreement" of 9-15-95 (Appendix F) that had been entered into therein; see the Giordenello case, supra And this, if such can be imagined, occurred in the instant case in spite of the Michigan Supreme court's beautiful exposition of the governing principle in People v Reagan, supra. By the terms thereof, the order of dismissal of 10-3-95 (Appendix G) was every

bit with prejudice as much as it was without prejudice depending upon the happening of the future event upon which the dismissal was predicated, to wit: "if there's some unusual circumstance that kept the officer from coming here". The future event never happened so that the "pledge of public faith" agreement of 9-15-95 (Appendix F) must be specifically enforced [as was the case with the agreement that was made in the Reagan case. The instant case is a stronger case than Reagan, for specifically enforcing a "pledge of public faith" agreement (that of 9-15-95 in the instant case) since, unlike the Reagan case, the "pledge of public faith" agreement of 9-15-95 was placed on the record in open court and approved by the judiciary [on said day (9-15-95)] and since, unlike the Reagan case, the order of dismissal [of 10-3-95 (Exhibit F)] was entered by consent of the parties (the City and defendant) to the first prosecution of defendant [for an ordinance violation (reckless driving in said City on 10-1-94)]. {The Reagan case, incidentally, had nothing whatever to do with double jeopardy [nor does the instant case (insofar as concerns Issue I) have anything to do with double jeopardy]}.

Wherefore the Supreme Court should instanter reverse the circuit court's affirmance of the judgment of sentence and commitment to jail of 3-23-98.

QUESTION II

[invalidity of the the attempt to impose probation upon petitioner (Appendix J)]

Question II assumes. arguendo, the validity of the judgment of sentence and committment to jail of 3-23-98 (Appendix I). Nevertheless, the probation imposed upon petitioner (24 months commencing 3-23-98

together with all of the unwarranted conditions thereof ; Appendix J) is void for any number of good and valuable reasons. First and foremost, is that same is not at all authorized. Defendant's offense obviously is not a "crime" under any criminal code in any State, but rather is a traffic "misdemeanor" under the traffic code as witness Appendix E (a traffic Citation provided for traffic offenses exclusively including civil infractions). The State statute under which defendant was convicted does not authorize probation, but, rather, nothing more than "90 days and/or $100.00". Secondly, the doctrine of exhaustion of a court's power of sentence. In the instant case the trial court's power of sentence was completely exhausted upon entry of the judgment of sentence and committment to jail of 3-23-98 (Appendix I) and by defendant's commencing to serve same on the very day of entry thereof; to wit: on 3-23-98. Probation is the antithesis of sentence; probation is a grace of the court granted in lieu of sentence, (hopefully, from the probationer's standpoint, hoping that he will complete his probation successfully) If the probation is successful, then the probationer is discharged without sentence being imposed. If he violates probation, then the deferring of his sentence is ended and he is sentenced as a "probationer" who violated probation. In the instant case, defendant is a "sentenced criminal" under the judgment of sentence and commitment to jail of 3-23-98 (Appendix I); he was never a "probationer". He could not be both; no one can be. In imposing probation, a court must assiduously refrain from exercising its power of sentence which the district court failed to do in the instant case; instead it entered the judgment of sentence and commitment to jail of 3-23-98 (Appendix I). Moreover, Appendix J which pretends to place defendant on "twenty-four months probation" is, itself, a "Sentencing Order", whereas, probation is

an option which requires that sentencing be deferred until probation is either completed or violated. "Probation must be combined with a deferral of sentencing"; U.S. v Faust , supra, - - which was not done in this case. Imposition and execution of sentence must "await disposition of probation"; People v Good , supra, whereas in the instant case, sentence was imposed on 3-28-98 (Appendix I) and was executed on the same day (3-28-98) by defendant's being incarcerated in the Oakland county jail on that day (3-28-98). In the instant case, the power of the district court over defendant ended on 3-23-98 when he was immediately incarcerated on that day (3-23-98) in the Oakland County jail under the judgment of sentence and commitment to jail of the same day (Exhibit G); see Ex parte Lang, supra, to the point that the power of a court over a defendant ceases when he begins to serve the sentence imposed upon him. The four lower courts were not able to discern a due process violation in respect to the illegal probation attempted to be imposed upon petitioner. Nor could they see what is plain: that a second incarceration of defendant under the 3-23-98 judgment of sentence and commitment to jail (Appendix I) would be a double jeopardy violation.

Wherefore, the Supreme Court should reverse the circuit court's affirmance of the illegal attempt to impose probation upon petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By: _____

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Dated: January 24, 2000

APPENDIX A

STATE OF MICHIGAN

(Circuit Court for the County of Oakland)

People of the State of Michigan,
plaintiff-appellee

-v- Circuit Crt. No. 98-DA7048-AR
District Court No. 95-007262

John N. Fisher,
defendant-appellant

Hon. Phillip J. Jourdan

_____/

Order Affirming Defendant's Conviction and Sentence
(At a session of said court etc held on August 31, 1998)

PRESENT: Hon. J. Phillip Jourdan, visiting circuit judge

This matter having come on to be heard on August 26, !998 on defendant's claim of appeal and the court being fully advised in the premises:

IT IS HEREBY ORDERED that defendant's conviction and sentence are hereby AFFIRMED for the reasons stated on the record.

_____/s/_____
VISITING CIRCUIT JUDGE

Approved as to form only:
_____/s/_____
W.L. Fisher, attorney for defendant

APPENDIX B

Court of Appeals, State of MIchigan

People of MIchigan v John N. Fisher

Docket No. 214453; LC No. 98-DA7048-AR

Jane E. Markey, presiding judge
Gary R. McDonald, judge
Joel P. Hoekstra, judge

_____/

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to appeal is DENIED for lack of merit in the grounds presented.

The motion for stay pending appeal is DENIED.

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on November 19, 1998.

(Seal of Court)

Nov. 19, 1998 _____/s/_____
Chief Clerk

APPENDIX C

ORDER Entered July 27, 1999

Michigan Supreme Court, Lansing, Michigan

People of the State of Michigan v John N. Fisher

SC: 113630; COA: 214453;
Oakland CC 98-DA 7048-AR

E.A. Weaver, Chief Justice;

J.H. Brickley; M.F. Cavanagh; M. Kelly; C.W. Taylor; M.D. Corrigan; R.P. Young, Jr., Justices

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On order of the Court, the motion for immediate consideration is considered and it is DENIED. The application for leave to appeal from the November 19, 1998 decision of the Court of Appeals is also considered and it is DENIED because we are not persuaded that the questions presented should be reviewed by this Court. The motion for stay of sentence is DENIED as moot.

I, Corbin R. Davis, Clerk of the MIchigan Supreme Court certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

(Seal of Court)

July 27, 1999 _____/s/_____
Deputy Clerk

APPENDIX D

ORDER Entered October 26, 1999

Michigan Supreme Court, Lansing, Michigan

People of the State of Michigan v John N. Fisher

SC: 113630; COA: 214453;
Oakland CC 98-DA 7048-AR

E.A. Weaver, Chief Justice;

M.F. Cavanagh; M. Kelly; C.W. Taylor; M.D. Corrigan;
R.P. Young, Jr., S.J. Markman, Justices

On order of the Court, the motion for reconsideration of this Court's order of July 27, 1999 is considered and it is DENIED because it does not appaer that the order was entered erroneously.

I, Corbin R. Davis, Clerk of the MIchigan Supreme Court certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

(Seal of Court)

October 26, 1999 _____/s/_____
Deputy Clerk

APPENDIX E

State of Michigan Uniform Vehicle Law Citation

Ticket Number 93-94-387551;

People of the City of Rochester Hills, Michigan ;

Complaint # 94-79855;

Undersigned says that on 10-1-94 John N. Fisher, the person named above in violation of local ordinance upon Longview at or near Clovelly within the City of Rochester, Hills, county of Oakland did, the following: Describe: reckless driving.

This violation is a misdemeanor; appearance date on or before 10 days in the 52/3 district court of Michigan 135 Barclay Circle, Rochester Hills, Mlichigan

_____/s/_____
Officer James R. Coates;
Officer's I.D. # 067
Oakland County Sheriff

Dated 10-6-94

APPENDIX F

The following (which is an excerpt from the transcript of hearing on 9-15-95) contains a verbatim record of the agreement that was made on 9-15-95. (Case # 94-008923-CT; 52/3 District Court; People of the City of Rochester Hills v John N. Fisher)

"Mr. CHRIST: Good morning your Honor. May it please the court, Dan Christ appearing on behalf of the City of Rochester Hills. Your Honor, this is the date and time scheduled for jury selection on this matter. I've had an opportunity to speak to defense counsel in this mat-ter. We are going to dismiss this matter without preju-dice, your Honor. The officer in charge of this case has not shown up. I don't know why he has not appeared. I did place a couple of calls over to the substation. If he - - I spoke to defense counsel, if there's - - it is without prejudice, if there's some unusual circumstance that kept the officer from coming here, he would be able to refile. Any other event, your Honor, he would not be able to. THE COURT: Mr. Fisher? Mr. FISHER: Yes, your Honor, that pretty much states the agreement that we've entered into; that if Officer Coates could not show a good and acceptable reason for not showing today, he is not able to rewrite. THE COURT: It will be dismissed without prejudice with the condition agreed to by the parties on the record. Any bond posted be order-ed returned. MR. FISHER: Thank you, your Honor. MR. CHRIST: Thank you, your Honor." (Proceedings concluded; transcript of 9-15-95; pages 2 and 3)

APPENDIX G

STATE OF MICHIGAN

52/03 Judicial District Case # 94-008923-CT

ORDER OF ACQUITTAL/DISMISSAL

City of Rochester Hills v John N. Fisher;

CRIME: RECKLESS DRIVING

ORDER OF DISMISSAL OR ACQUITTAL

1. It is ordered that the charge is dismissed.

2. It is further ordered that the defendant shall be immediately discharged from custody and confinement on the above charge. If bond has been posted it is terminated and the amount deposited shall be returned except for a portion which may be retained as court costs for the posting of bond.

3. Other: Dismiss without prejudice.

10/03/95 _____/s/_____

Judge Ralph H. Nelson

APPENDIX H

STATE OF MICIGAN Pros..Order No. 95-63896

District Court 52/3 Case No. 95-007262

The People of the State of Michigan v John Newman Fisher

Date of Offense October 1, 1994 Location City of Rochester Hills

Complainant Marie Ratee Complaining Witness Dep. J. Coates Witnessess *******

State of Michiagn County of Oakland

The above named COMPLAINING WITNESS being duly sworn before the undersigned Judge, Magistrate or Clerk of the District Court, upon the date indicated below says that heretofore on the DATE OF OFFENSE listed above at the LOCATION listed above in said County, State of Michigan the above named Defendant did drive a vehicle upon a highway or a frozen lake or pond or other place open to the general public including any area designated for the parking of motor vehicles, to wit: upon Harrison near Clovelly within the State of Michigan in wilful or wanton disregard for the safety of person or property; Contrary to the statute in such case made and provided and Sec. 257.626; C.L. 1979; M.S.A. 9.2326; MCL 257.526 MISDEMEANOR 90 days and/or $100.00 RECKLESS DRIVING Warrant authorized by ____/s/____ Assistant Prosecuting Attorney

WHEREFORE, the said Complainant prays that the said Defendant may be apprehended and held to answer this

Complaint and further dealt with in relation to the same as law and justice may require.

Dated 10-10-95

Subscribed and Sworn to on this day by _____/s/_____
James R. Coates Complaijning Witness
_____/s/_____
Before the above named District Judge/Deputy Clerk/Magistrate

APPENDIX I

STATE OF MICHIGAN

(52/3 District Court)

People of the State of Michigan,

-v- No. 95-007262

John N. Fisher, defendant

_____/

JUDGMENT OF SENTENCE COMMITMENT TO JAIL

The Court Finds:

1. Defendant was found guilty on 1-23-98 of the crime as stated below: RECKLESS DRIVING.

2-5. ********

IT IS ORDERED:

6. Defendant is sentenced to jail as follows: Date sentence begins 3-23-98 sentenced 45 days to be served: 45 days

_____/s/_____

Date 3-23-98 (Seal) Ralph H. Nelson, Judge

APPENDIX J

STATE OF MICHIGAN

(52/3 District Court)

People of the State of Michigan,

-v- No. 95-007262

John N. Fisher, defendant

_____/

SENTENCING ORDER

Date: 3/23/98

Defendant John N. Fisher

Offense: Reckless Driving

Defendnat was found guilty on 1-23-98 of the crime as stated below: RECKLESS DRIVING.

1-4. ****
5. TWENTY-FOUR MONTHS PROBATION AND $720 P.O.E. at $30 per month.
6 ****
7. The Defendant shall pay fine and court costs of $200.00.
8. ****
9. That the Defndant shall serve 45 days in the Oakland County jail beginning on ____ by8:00A.M. less) days credit for time served.
10-17 ****

18. The Defendant shall seek and/or maintain mental health treatment as directed and verified by the probation officer.
19. The Defendant shall submit to and pay for urinalysis and/or PBT testing at the Probation Officer's request and verify.
20. ****
21. The defendant shall refrain from the use of alcohol and/or illicit non-prescribed drugs and visiting places where such is sold for public consumption.
22-23 ****
24. The Defendant shall reimburse the Probation Department for assessement report fee.
25-26 ****

/s/
Ralph H. Nelson, Judge